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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,237	10/31/2003	Lilip Lau	PARCR 66289	2366
7590 03/21/2005			EXAMINER	
John S. Nagy, Esq. Fulwider Patton Lee & Utecht, LLP Howard Hughes Center 6060 Center Drive, Tenth Floor Los Angeles, CA 90045			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 03/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/698,237	Applicant(s) LAU ET AL.	
	Examiner Samuel G. Gilbert	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-33 is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/29/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 4/29/2004 has been considered.

Specification

The disclosure is objected to because of the following informalities: in paragraph [0055], under the heading detailed description of the invention, the applicant describes an embodiment constructed of polyester filaments knit in a well known "Atlas Knit" and then incorporates by reference international patent Publication Number WO 01/95830 A2. It is unclear to the examiner if the applicant has invented such an embodiment or if the applicant is describing prior art. WO 01/95830 A2 has a different inventive entity than the current application. If the described embodiment is indeed prior art the content of the specification directed to such an embodiment should be moved to the background of the invention section of the specification. Further any figures directed to prior art should be so labeled.

Appropriate correction is required.

The disclosure is objected to because of the following informalities: metric and English units need to be set forth in the specification. See 608.01 IV below.

Appropriate correction is required.

MPEP 608.01 IV. < USE OF METRIC SYSTEM OF MEASUREMENTS IN
PATENT APPLICATIONS

In order to minimize the necessity in the future for converting dimensions given in the English system of measurements to the metric system of measurements when using printed patents as research and prior art search documents, all patent applicants should use the metric (S.I.) units followed by the equivalent English units when describing their inventions in the specifications of patent applications.

The initials S.I. stand for "Le Système International d' Unités," the French name for the International System of Units, a modernized metric system adopted in 1960 by the International General Conference of Weights and Measures based on precise unit measurements made possible by modern technology.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 – in line 6, it is unclear to the examiner if "an operating range of expansion" is the circumferential expansion previously set forth. Further, in line 6, "a minimum value of at least 20 percent" is set forth, however it is unclear as to 20 percent of what is being set forth.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9-20 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Alferness et al (6,482,146). The applicant's attention is invited to figure 22. It is the examiners position that any selected 10 percent change in strain can be expressed generally as $y = ax + b$. The examiner is taking generally to be a broad term. In other words, the graph is generally linear between any two points 10 percent of strain apart.

Allowable Subject Matter

Claims 21-33 are allowed.

Claims 1-8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: Claim 21 – the prior art does not teach or fairly suggest a cardiac harness as claimed wherein the variation of load as a function of expansion between 20 and 30 percent expansion being generally in the form of $y=ax+b$; where the coefficient of determination is of at least about 0.8 and the value of "a" being no greater than about 0.0033.

Art Unit: 3736

Claim 29 - the variation of load as a function of expansion through a selected range being generally in the form of $y=cf^2+ax+b$ where a, b and c are determined by linear regression and c is negative.

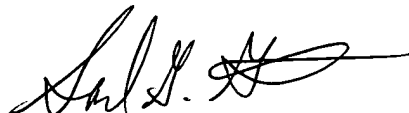
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 5,150,706; 6,360,749; and 6,126,590 teach related cardiac support devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenberg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert
Primary Examiner
Art Unit 3736

sgg